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9 Attorneys for Plaintiff EDGE GAMES

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11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 EDGE GAMES, LLC a California
Limited Liability Company,

14 Plaintiff,

15 v.

16 HOUGHTON MIFFLIN HARCOURT
17 PUBLISHING COMPANY, a
Massachusetts Corporation; and DOES 1-
18 10

19 Defendants.

Case Number:

**COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF**

1. **Federal Trademark
Infringement
(15 U.S.C. §1114)**
2. **False Designation of
Origin
(15 U.S.C. §1125(A))**
3. **Unfair Competition
(Cal. Bus. & Prof. Code
§17200)**
4. **False Advertising
(15 USC §1125(a)(1)(B))**

(DEMAND FOR JURY TRIAL)

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24 Plaintiff Edge Games, LLC (“Edge”) alleges as follows:

25 1. This action arises from the unauthorized use of the trademark SCIENCE
26 FUSION by Houghton Mifflin Harcourt Publishing Company (“HMH”).

27 2. By using a trademark that is identical to Plaintiff’s federally registered
28 trademark, Defendants have caused and are likely to continue to cause confusion

1 between Plaintiff's goods and Defendants' goods. Consequently, Plaintiff seeks
 2 injunctive relief and damages under the federal Lanham Act (15 U.S.C. §§1051 et.
 3 Seq.), and the California Business and Professions Code.

4 I.

5 JURISDICTION AND VENUE

6 3. This Court has personal jurisdiction over Defendant because it conducts
 7 business within the state of California and maintains an office at 11276 5th Street, #100
 8 in Rancho Cucamonga, California.

9 4. This Court has subject matter jurisdiction over this matter pursuant to 15
 10 U.S.C. §1121 and 28 U.S.C. §§1331, 1332, 1338, and 1367. Plaintiff's claims are, in
 11 part, based on violations of the Lanham Act, 15 U.S.C. §§1051 et. Seq. This Court has
 12 jurisdiction over the state law claims pursuant to 28 U.S.C. §§1332, 1338(b), and 1367.

13 5. Venue lies in the Central District of California pursuant to 28 U.S.C.
 14 §1391(b), (c), and (d). Plaintiff is informed and believes that Defendants maintain an
 15 office in this district, sell their infringing products online to purchasers in this district,
 16 that consumers use the infringing products in this district, and that Defendants sell to
 17 individuals and institutional consumers of educational goods here in this district.

18 II.

19 THE PARTIES

20 6. Plaintiff Edge Games, LLC, is a California Limited Liability Company
 21 having its principle place of business at 230 Martin Street, Lakeport, California 95453.

22 7. Defendant Houghton Mifflin Harcourt Publishing Company is a
 23 Massachusetts Corporation, with its principle place of business at 222 Berkeley Street
 24 in Boston, Massachusetts. It is registered to do business in the State of California and
 25 maintains an office at 11276 5th Street, #100 in Rancho Cucamonga, California.

26 8. Plaintiff is ignorant of the true names of defendants named as DOES 1-10
 27 and thus names said defendants fictitiously. These fictitious defendants include, but are
 28 not limited to, any subsidiaries and/or parent companies of Defendant HMH of which

1 Plaintiff is ignorant and which have participated and/or are participating in the acts of
 2 trademark infringement and unfair competition alleged herein. Plaintiff will amend its
 3 complaint to substitute the true names of DOES 1-10 as those names are discovered.

4 III.

5 GENERAL ALLEGATIONS

6 9. Plaintiff is the owner of the federally registered SCIENCE FUSION
 7 trademark (Registration No. 3370535) in International Class 028 for educational games
 8 in the nature of board games, card games, electronic learning toys, and puzzles. The
 9 mark was registered on January 15, 2008, and is now incontestible. A true and correct
 10 copy of Plaintiff's trademark registration certificate is attached as **Exhibit 1**.

11 10. Plaintiff is the producer of SCIENCE FUSION, a collectible card game
 12 based on the periodic table of elements and intended to help children learn real
 13 information while having fun. In the game, players ("Scienauts") battle one another
 14 using element characters such as Hydrogena (Hydrogen) and Ironbot (Iron). Each
 15 element character has abilities and statistics that correspond to the element. For
 16 example, the "attack number" is also the atomic number, the "I.P." (injury points) are
 17 the element's ionization potential, and the "electro shield" is the valence electrons.
 18 Element characters compete in matches and victorious cards can combine into
 19 compounds, alloys, and factions.

20 11. Plaintiff first began using the SCIENCE FUSION mark in commerce when
 21 it began to sell and promote its game in early 2006 and has continuously used the mark
 22 in commerce ever since.

23 12. SCIENCE FUSION is sold in stores and online at [www.science-](http://www.science-fusion.com)
 24 [fusion.com](http://www.science-fusion.com). Also available on the website are free lesson plans for teachers and sample
 25 games that can be played electronically. SCIENCE FUSION was voted the best new
 26 table top game at KublaCon, the largest west coast game convention in 2007.

27 13. Plaintiff has begun expansion of its use of the mark into other industries,
 28 including literature. In August 2008, "The Sweetness of Suffering--An Episode of

1 Science-Fusion” (written by Plaintiff’s Tim Pelzel) was first published in Of Dice &
 2 Pen, a collection of short stories by gaming’s hottest creators. Mr. Pelzel’s related
 3 science fiction novel “Science-Fusion” is due to be published in 2014.

4 14. Plaintiff is informed and believes that Defendant HMH is selling and
 5 offering for sale an identically named “ScienceFusion” product. HMH’s product is
 6 marketed on Defendant’s website as an educational science program incorporating both
 7 a print curriculum, digital lessons, and virtual labs.

8 15. HMH offers its product for sale through its online website
 9 www.hmhco.com. Its product is sold by the ‘set,’ with one set required for each child.
 10 The price of each set varies between \$100 and \$200. HMH also sells teachers’s editions
 11 and “Delux Box” products. Various pieces of the individual kits appears to be sold
 12 separately as well, including “Picture Sorting Cards.”

13 **FIRST CLAIM FOR RELIEF**

14 **Federal Trademark Infringement**

15 **(15 U.S.C. §1114)**

16 16. Plaintiff realleges and incorporates by reference each of the foregoing
 17 allegations as though set forth in full at this point.

18 17. Plaintiff is the owner of the federally registered and incontestible
 19 trademark SCIENCE FUSION. Defendants had either actual notice, or had constructive
 20 notice of Plaintiff’s ownership and registration of SCIENCE FUSION pursuant to 15
 21 U.S.C. §1072 prior to Defendants’ adoption and use of “ScienceFusion.”

22 18. Defendants are using the SCIENCE FUSION trademark, without
 23 Plaintiff’s consent, in connection with the sale and offering for sale of related goods.
 24 Defendants’ unauthorized use of the SCIENCE FUSION trademark falsely indicates to
 25 consumers that Defendants’ goods are in some manner connected with, sponsored by,
 26 affiliated with, or are in fact the goods of Plaintiff. In the alternative, Defendants’
 27 unauthorized use of the SCIENCE FUSION trademark may cause consumers to believe
 28 that Plaintiff and its goods are in some manner connected with, sponsored by, affiliated

1 with, or are in fact the goods of Defendants. Defendants' unauthorized use of the
 2 SCIENCE FUSION trademark is likely to cause consumers to be confused as to the
 3 source, sponsorship, affiliation, or approval of the goods.

4 19. Defendants are likely to cause confusion, or to cause mistake, or to deceive
 5 consumers or potential consumers in violation of 15 U.S.C. §1114.

6 20. As a direct and proximate result of Defendants' conduct, Plaintiff is
 7 entitled, pursuant to 15 U.S.C. §1117(a), to recovery of: (i) Defendants' profits related
 8 to all uses of the SCIENCE FUSION trademark, and all iterations thereof; (ii) any
 9 damages sustained by Plaintiff as a result of Defendants' conduct, the precise amount
 10 of which shall be established by Plaintiff at trial; and (iii) the costs of this action.

11 21. In addition, Plaintiff will be irreparably injured by Defendants' continued
 12 trademark infringement, in a manner which may be impossible to quantify, unless
 13 enjoined by this Court. Plaintiff has no adequate remedy at law for this ongoing injury.
 14 Plaintiff therefore seeks a preliminary and permanent injunction to prohibit Defendants
 15 from any further use of the SCIENCE FUSION trademark, or any iterations thereof, in
 16 connections with the advertising, marketing, promotion, sale and offering for sale of
 17 any educational products without Plaintiff's express written consent in advance.

18 22. Defendants have willfully poached Plaintiff's federally registered
 19 trademark for their own use and have launched a massive promotion of their competing
 20 product under the SCIENCE FUSION mark, despite their knowledge of Plaintiff's
 21 SCIENCE FUSION product and Plaintiff's federal registration. Given these
 22 exceptional circumstances of flagrant and willful infringement, Plaintiff requests treble
 23 damages, judgment for a sum that this Court finds to be just, and reasonable attorney's
 24 fees, pursuant to 15 U.S.C. §1117(a).

25 **SECOND CLAIM FOR RELIEF**

26 **False Designation of Origin**

27 **(15 U.S.C. §1125(a))**

28 23. Plaintiff realleges and incorporates by reference each of the foregoing

1 allegations as though set forth in full at this point.

2 24. Defendants are using in commerce and in connection with Defendants'
3 goods, the SCIENCE FUSION trademark. This unauthorized use is likely to cause
4 consumer confusion, to cause mistake, or to deceive as to the affiliation, connection, or
5 association of Defendants with Plaintiff, or as to the origins, sponsorship, or approval
6 of Defendants' goods by Plaintiff. In the alternative, Defendants' unauthorized use is
7 likely to cause consumer confusion as to the affiliation, connection, or association of
8 Plaintiff with Defendants, or as to the origin, or sponsorship, of Plaintiff's goods by
9 Defendants.

10 25. Plaintiff has been, is, and will be damaged by Defendants' unauthorized
11 use of the SCIENCE FUSION trademark.

12 26. As a direct and proximate result of Defendants' conduct, Plaintiff is
13 entitled, pursuant to 15 U.S.C. §1117(a), to recovery of: (i) Defendants' profits related
14 to all uses of the SCIENCE FUSION trademark, and all iterations thereof; (ii) any
15 damages sustained by Plaintiff as a result of Defendants' conduct, the precise amount
16 of which shall be established by Plaintiff at trial; and (iii) the costs of this action.

17 27. In addition, Plaintiff will be irreparably injured by Defendants' continued
18 trademark infringement, in a manner which may be impossible to quantify, unless
19 enjoined by this Court. Plaintiff has no adequate remedy at law for this ongoing injury.
20 Plaintiff therefore seeks a preliminary and permanent injunction to prohibit Defendants
21 from any further use of the SCIENCE FUSION trademark, or any iterations thereof, in
22 connections with the advertising, marketing, promotion, sale and offering for sale of
23 any educational products without Plaintiff's express written consent in advance.

24 28. Defendants have willfully poached Plaintiff's trademark for their own use
25 and have launched a massive promotion of their competing product under the SCIENCE
26 FUSION mark, despite their knowledge of Plaintiff's SCIENCE FUSION product and
27 Plaintiff's federal registration. Given these exceptional circumstances of flagrant and
28 willful infringement, Plaintiff requests treble damages, judgment for a sum that this

1 Court finds to be just, and reasonable attorney's fees, pursuant to 15 U.S.C. §1117(a)

2 **THIRD CLAIM FOR RELIEF**

3 **Unfair Competition**

4 **(Cal. Bus. & Prof. Code §17200)**

5 29. Plaintiff realleges and incorporates by reference each of the foregoing
6 allegations as though set forth in full at this point.

7 30. Defendants' acts described above constitute unfair competition in violation
8 of California Business and Professions Code § 17200 et seq., as they are unlawful,
9 fraudulent, unfair, misleading and likely to deceive the public.

10 31. As a result of Defendants' acts of unfair competition, Plaintiff is entitled
11 to restitution of the profits and other ill-gotten gains by Defendants from Defendants
12 use of the SCIENCE FUSION mark.

13 32. Plaintiff is also entitled to injunctive relief pursuant to California Business
14 and Professions Code §17203, enjoining Defendants from using the SCIENCE FUSION
15 mark in connection with the advertising, promotion, sale and offering for sale of
16 educational goods without Plaintiff's express written consent in advance.

17 **FOURTH CLAIM FOR RELIEF**

18 **False Advertising**

19 **(15 USC §1125(a)(1)(B))**

20 33. Plaintiff realleges and incorporates by reference each of the foregoing
21 allegations as though set forth in full at this point.

22 34. Defendant is using in commercial advertising the SCIENCE FUSION mark
23 to denote its own product. This use in commercial advertising misrepresents the nature
24 of Defendant's goods in that it tends to lead consumers to believe they are dealing with
25 Plaintiff's game and/or a variation thereof, which Defendant's product is not.

26 35. Plaintiff is likely to be damaged by these acts of false advertising through
27 loss of customers and/or loss of goodwill.

28 36. As a direct and proximate result of Defendants' conduct, Plaintiff is

1 entitled, pursuant to 15 U.S.C. §1117(a), to recovery of: (i) Defendants' profits related
 2 to all uses of the SCIENCE FUSION trademark, and all iterations thereof; (ii) any
 3 damages sustained by Plaintiff as a result of Defendants' conduct, the precise amount
 4 of which shall be established by Plaintiff at trial; and (iii) the costs of this action.

5 37. In addition, Plaintiff will be irreparably injured by Defendants' continued
 6 false advertising of its product under Plaintiff's SCIENCE FUSION trademark, in a
 7 manner which may be impossible to quantify, unless enjoined by this Court. Plaintiff
 8 has no adequate remedy at law for this ongoing injury. Plaintiff therefore seeks a
 9 preliminary and permanent injunction to prohibit Defendants from any further use of
 10 the SCIENCE FUSION trademark, or any iterations thereof, in connections with the
 11 advertising, marketing, promotion, sale and offering for sale of any educational
 12 products without Plaintiff's express written consent in advance.

13 38. Defendants have willfully poached Plaintiff's federally registered
 14 trademark for their own use and have launched a massive promotion of their competing
 15 product under the SCIENCE FUSION mark, despite their knowledge of Plaintiff's
 16 SCIENCE FUSION product and Plaintiff's federal registration. Given these
 17 exceptional circumstances of flagrant and willful false advertising, Plaintiff requests
 18 treble damages, judgment for a sum that this Court finds to be just, and reasonable
 19 attorney's fees, pursuant to 15 U.S.C. §1117(a)

20 WHEREFORE, Plaintiff prays for relief as follows:

21 1. Entry of an order and judgment enjoining Defendants, their officers,
 22 agents, servants, employees, owners and representatives, and all other persons or
 23 entities in active concert or participation with Defendants, from using, in any manner,
 24 the SCIENCE FUSION mark, or any colorable imitation thereof in connection with the
 25 sale, offering for sale, distribution, or advertising or promotion of any goods likely to
 26 cause consumers confusion, or to cause mistake or to deceive as to the association,
 27 origin, sponsorship, or approval of said goods, or as to the connection between Plaintiff
 28 and Defendants and/or their respective goods, and enjoining Defendants acts of unfair

1 competition.

2 2. A judgment ordering Defendants, pursuant to 15 U.S.C. §1116(a), to file
3 with this Court and serve upon Plaintiff within thirty (30) days after entry of the
4 injunction, a report writing under oath setting forth in detail the manner and form in
5 which Defendants have complied with the injunction as set forth above.

6 3. A judgment in the amount of Plaintiff's actual damages, treble damages,
7 Defendants' profits, Plaintiff's reasonable attorney's fees and costs of suit, an amount
8 that this Court deems just given Defendants' wilful and flagrant infringement, and pre-
9 judgment interest pursuant to 15 U.S.C. §1117;

10 4. A judgment for restitution of Defendants' profits and ill-gotten gains
11 acquired through its acts of unfair competition.

12 Respectfully Submitted,

13 DATED: November 18, 2013

14 **WIRTZ LAW APC**

15 By: /s/ Richard M. Wirtz
16 Richard M. Wirtz
17 Attorneys for Plaintiff
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